August 09, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Wavaho Oil Co., Inc.

Date of Filing: March 28, 2005

Case No.: TEE-0019

On March 28, 2005, Wavaho Oil Co., Inc. (Wavaho) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Wavaho's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates and propane, and residual

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

fuel oil. The form requests volume and price information for retail and wholesale sales.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B[2]. The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.[3]

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."[4] Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;[5] the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;[6] extreme or unusual

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[2] Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

[3] Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

[4] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).

[5] *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

[6] *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

circumstances disrupt a firm's activities;[7] and a combination of factors render the reporting requirement an undue burden.[8]

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.[9] Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.[10]

III. Wavaho's Application for Exception

Wavaho is located in Lacey's Spring, Alabama and was designated by EIA as a member of a sample group required to file Form EIA-782B. In its application, the firm stated that it is a small company that is run by two brothers and sells gasoline only. The firm further stated that it cannot afford to hire help to complete the forms.

After our preliminary review of the Application for Exception, we contacted Wavaho to give the firm an opportunity to discuss the request.[11] Wavaho stated that the company sells retail gasoline at approximately twenty-five locations. Wavaho further stated it does not have computer software to collect the necessary information from the locations. As a result, the firm stated, it takes two to three days to complete the form.

We then wrote the firm a letter, advising it that we did not see the basis for an exception, and we offered the firm an opportunity to provide further information or argument. In a subsequent letter, Wavaho responded that the reporting

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[7] ***Little River Village Campground Inc.,*** **24 DOE ¶ 81,033 (1994) (five months relief because of flood);** ***Utilities Bd. Of Citronelle-Gas,*** **4 DOE ¶ 81,025 (1979) (hurricane);** ***Meier Oil Serv.,*** **14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).**

[8] ***Ward Oil Co.***, **24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).**

[9] ***Glenn W. Wagoner Oil Co.***, **16 DOE ¶ 81,024 (1987).**

[10] ***Mulgrew Oil Co.***, **20 DOE ¶ 81,009 (1990).**

[11] **Telephone Conversation between Ronald D. Hester, OHA, and Vann Hough,** ***Wavaho Oil Co., Inc.*** **(April 14, 2005).**

requirement is disrupting its operations and impeding its ability to file other required forms.

IV. Analysis

During our preliminary review we contacted an EIA staff member to determine whether Wavaho had been required to prepare and file the EIA 782-B Monthly Petroleum Product Sales Report in the past. The EIA personnel stated that Wavaho was selected to report for the first time in the summer of 2004.[12]

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. As indicated above, the form requires the reporting of volume and price information for sales of motor gasoline, No. 2 distillates and propane, and residual fuel oil. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.[13] We note that the burden of this requirement on the firm could be lessened by the use of estimates.[14]

Wavaho has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens." Multiple locations, combined with the lack of computer software does not warrant a conclusion that the reporting requirement adversely affects the firm in a way that differs from its impact on other firms.[15]

Similarly, the firm's argument that it is small does not provide a basis for exception relief. As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, a claim that a firm is small does not establish the existence of an inequity or unfair distribution of burdens.

[12] Conversation between Ronald D. Hester (OHA) and Tammy Heppner (EIA) on July 27, 2005.
[13] *See* Section 10 of General Instructions to Form EIA- 782B.
[14] *See* Section 7 of the General Instructions to Form EIA-782B.
[15] *See* Section 10 of General Instructions to Form EIA- 782B.

As the foregoing indicates, the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Application for Exception filed by Wavaho Oil Co., Inc., Case No. TEE-0019, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: August 09, 2005